

US EPA ARCHIVE DOCUMENT

Summary of EPA's Audit Policy



Wesley S. Hardegree, EPA – Region 4
July 30, 2008



EPA Compliance Assurance

- EPA (OECA) is responsible for maximizing compliance to a universe of over 40 million regulated entities using:
 - 10 federal environmental statutes dealing with prevention and control of pollution, and
 - 28 distinct federal programs under those statutes.
- To conduct the work necessary for the 28 programs, OECA utilizes 4 primary tools to pursue compliance, thereby achieving cleaner air, purer water and better-protected lands.
 - Compliance Assistance
 - *Compliance Incentives*
 - Compliance Monitoring
 - Enforcement



EPA's Audit Policy: Purpose and History

- The purpose of EPA's Audit Policy is to encourage regulated entities to...
 - *voluntarily discover,*
 - *disclose,* ...of federal environmental requirements.
 - *correct, and*
 - *prevent violations*
- The Audit Policy is technically known as *"Incentives for Self Policing: Discovery, Disclosure, Correction, and Prevention of Violations"*
- Original Policy
 - 60 FR 66706 - Effective January 22, 1996
- Revised Policy
 - 65 FR 19,617 - Effective May 11, 2000
 - www.epa.gov/compliance/incentives/auditing/auditpolicy.html



Summary of Incentives under EPA's Audit Policy

- No routine requests for audit reports
- No recommendation for criminal prosecution
- Penalty mitigation

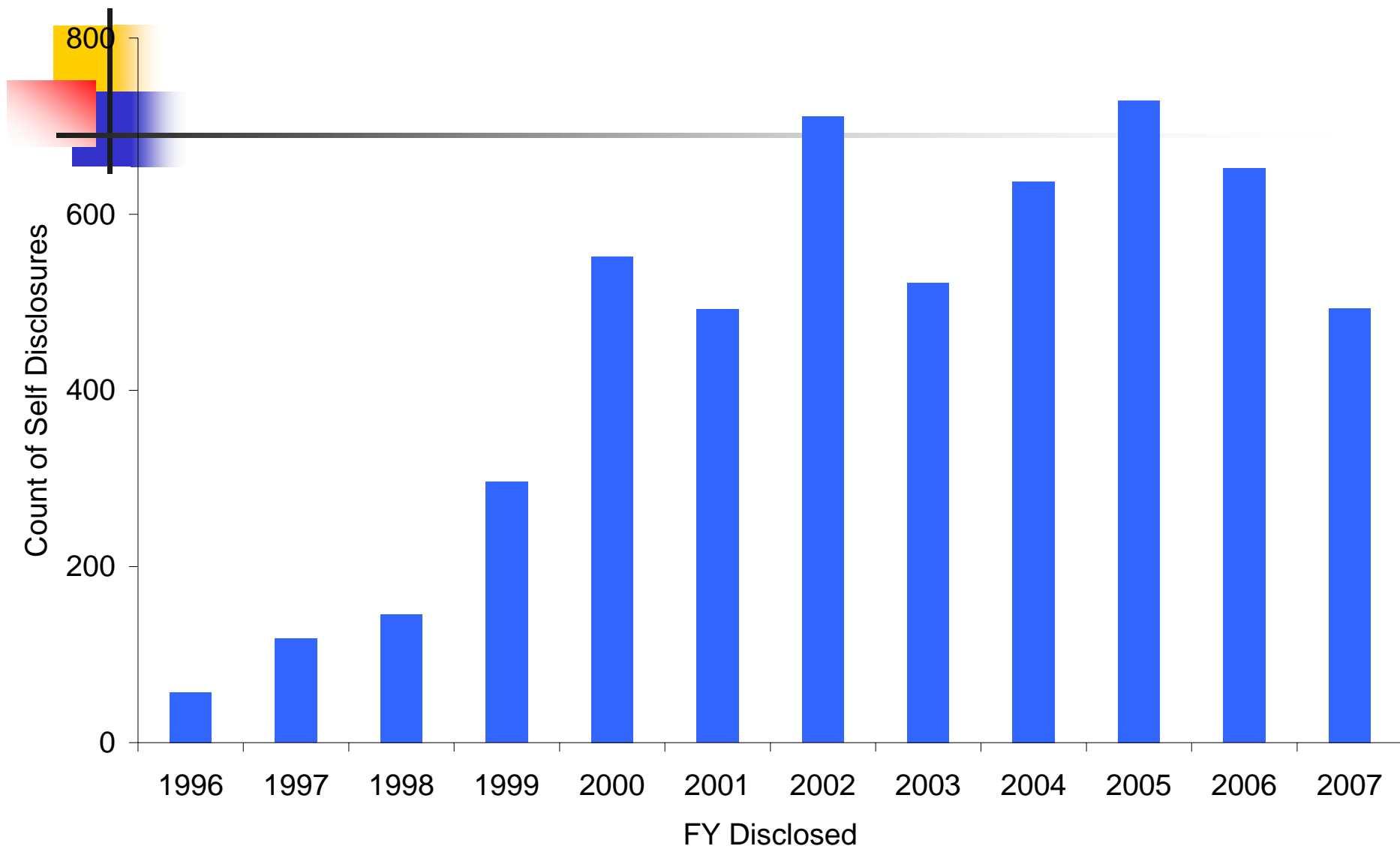


Audit Policy: Penalty Mitigation

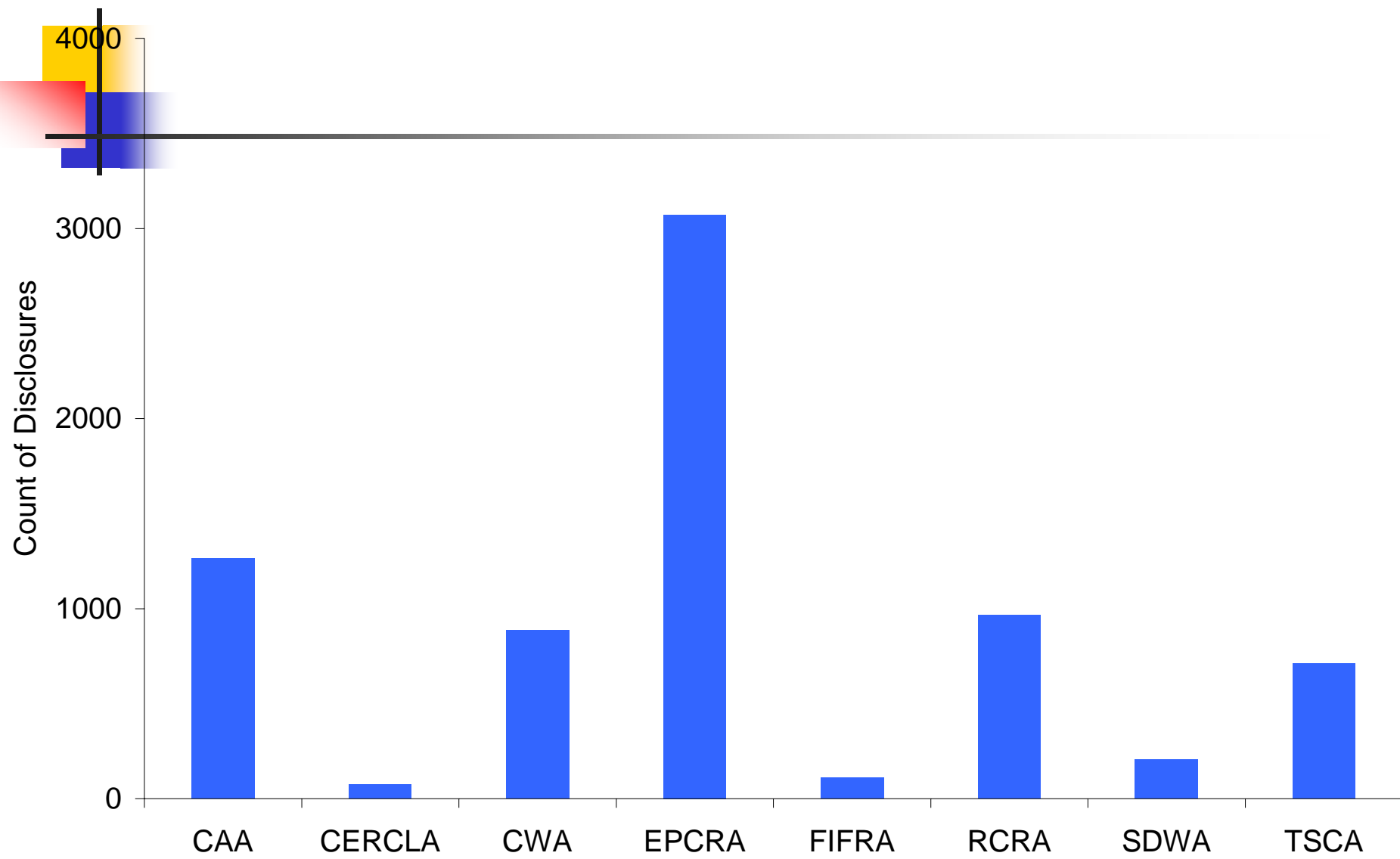
- Civil penalties under the environmental laws generally have 2 components:
 - an amount assessed based upon the severity or "*gravity*" of the violation, and
 - the amount of *economic benefit* a violator received from failing to comply with the law.
- Under the Audit Policy,
 - No gravity-based penalties (i.e., *100% gravity-based mitigation*) if all nine of the Policy's conditions are met.
 - EPA retains its discretion to collect any economic benefit that may have been realized as a result of non-compliance.
 - Under the Audit Policy, a *reduction of gravity-based penalties by 75%* where the disclosing entity meets all of the Policy's conditions except detection of the violation through a systematic discovery process.

Condition Number	Short-Hand Summary of Audit Policy Conditions
1	<u>Systematic Discovery</u> of the violation through an environmental audit or a compliance management system.
2	<u>Voluntary Discovery</u> , in other words it is not through a legally required monitoring, sampling or auditing procedure.
3	<u>Prompt Disclosure</u> in writing to EPA within 21 days of discovery or any shorter time required by law.
4	<u>Independent Discovery and Disclosure.</u>
5	<u>Correction and Remediation</u> within 60 days, in most cases, from date of discovery.
6	<u>Prevent recurrence of a violation.</u>
7	<u>Repeat violations</u> are not eligible for mitigation under the Audit Policy.
8	<u>Certain violations are not eligible.</u>
9	<u>Cooperation</u> by the disclosing entity is required.

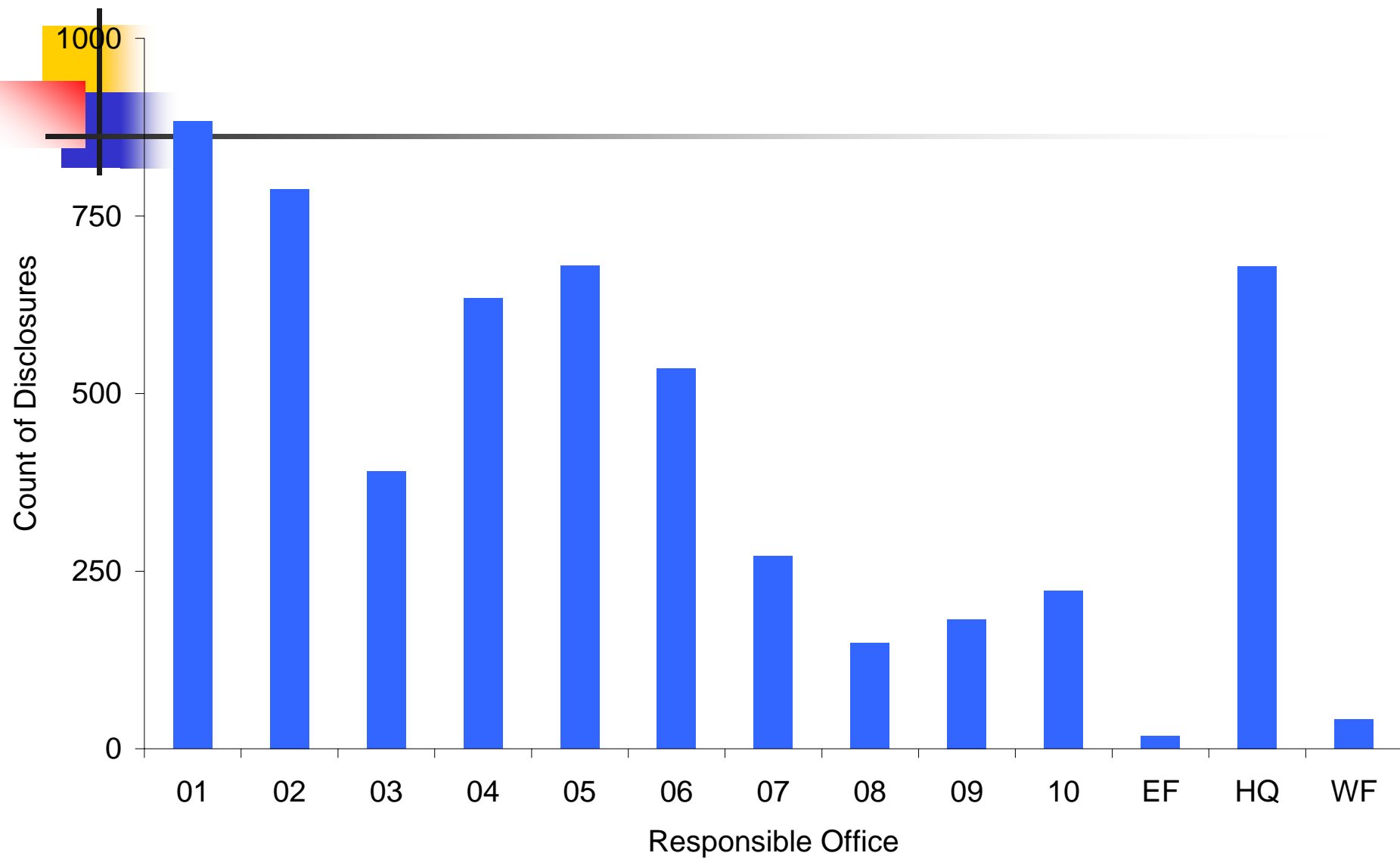
Disclosure Activity Trend 1996-2007



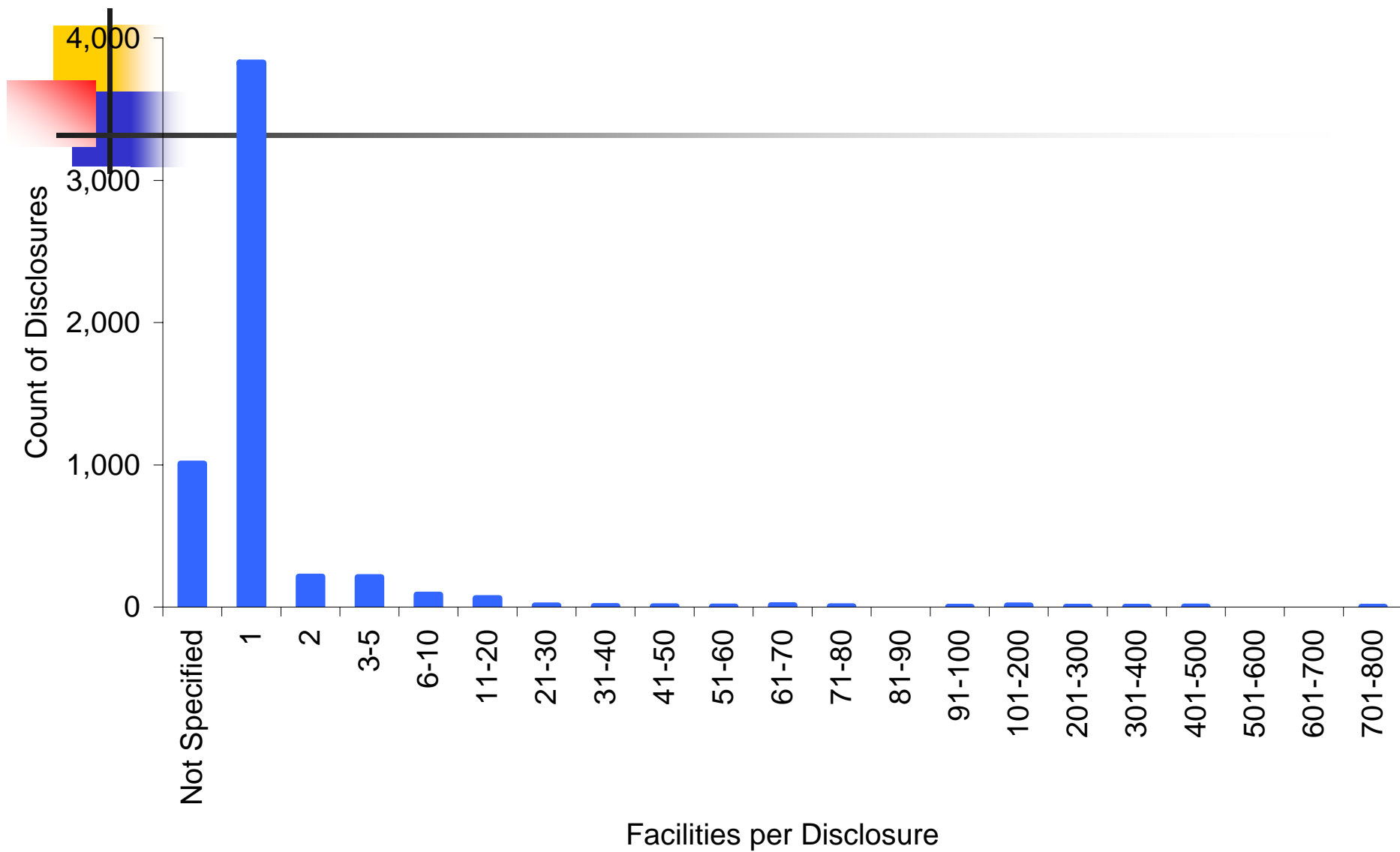
Disclosures by Environmental Statute



Disclosures by EPA Regions



Number of Facilities per Disclosure



Audit Tool – Audit Protocols

- Developed by EPA to assist entities in developing compliance audits.
- Provide detailed regulatory checklists in easy to understand question format.
- Protocols cover: CERCLA, CWA, EPCRA, FIFRA, RCRA, TSCA, SDWA.
 - <http://cfpub.epa.gov/compliance/resources/policies/incentives/auditing/>



Protocol for Conducting Environmental Compliance Audits for Hazardous Waste Generators under RCRA



EPA Office of Compliance



How to Make a Disclosure Under EPA's Audit Policy:

- **Contact EPA Region where entity or facility is located.**
 - Region 4: <http://www.epa.gov/Region4/ead/legal/auditproc.html>
- **Where multiple Regions are involved, contact EPA HQ.**
 - Philip Milton, EPA HQ
(202) 564 - 5029
- **For criminal violations, contact: Regional Criminal Investigation Division, EPA HQ, or U.S. Department of Justice.**
 - James T. Morgan, EPA HQ
Criminal Investigations Division
(202) 564 - 7684



EPA Region 4 Process for Audit Disclosures

- Letter acknowledging receipt of disclosure within 30 days of submitting disclosure.
- EPA review includes:
 - > Determine if disclosure meets nine criteria of Policy.
 - > Request additional information, if needed.
 - > Determine whether penalty mitigation is appropriate.



For More Information - Contacts

- **Kelly Sisario, EPA Region 4**
 - Branch Chief, Enforcement and Compliance Planning Branch
 - (404) 562 – 9054

- **Wesley Hardegree, EPA Region 4**
 - Compliance Assistance Coordinator
 - (404) 562 – 9629

- **Kevin Smith, EPA Region 4,**
 - Lead Attorney on Audit Policy
 - (404) 562 - 9525



What are the Nine Conditions of the Audit Policy?

1. **Systematic Discovery** of the violation through an environmental audit or a compliance management system.
 - If the violation was discovered through an environmental audit or a compliance management system, then systematic discovery likely occurred. NOTE: A 75% penalty reduction is available where the disclosing entity meets all of the Audit Policy's conditions except detection of the violation through a systematic discovery process.



Conditions of Policy *continued*

2. **Voluntary Discovery**, in other words it is not through a legally required monitoring, sampling or auditing procedure.



Conditions of Policy *continued*

3. **Prompt Disclosure** in writing to EPA within 21 days of discovery or any shorter time required by law. Discovery occurs when any officer, director, employee or agent of the facility has an objectively reasonable basis for believing that a violation has or may have occurred.



Conditions of Policy *continued*

4. **Independent Discovery and Disclosure**, before EPA likely would have identified the violation through its own investigation or based on information from a third party.



Conditions of Policy *continued*

5. **Correction and Remediation** within 60 days, in most cases, from date of discovery.



Conditions of Policy *continued*

6. Prevent recurrence of a violation.



Conditions of Policy *continued*

7. Repeat violations are not eligible for mitigation under the Audit Policy. In other words, the same or closely related violations that occurred within the past 3 years at the same facility or as part of a pattern of violations within the past 5 years at facilities owned or operated by the same entity are not eligible.



Conditions of Policy *continued*

8. **Certain violations are not eligible**: Those that result in serious actual harm; that may have presented an imminent and substantial endangerment; or that violate specific terms of an Administrative or Judicial Order or Consent Agreement.
9. **Cooperation** by the disclosing entity is required.

Summary of Environmental Management Systems (EMS)



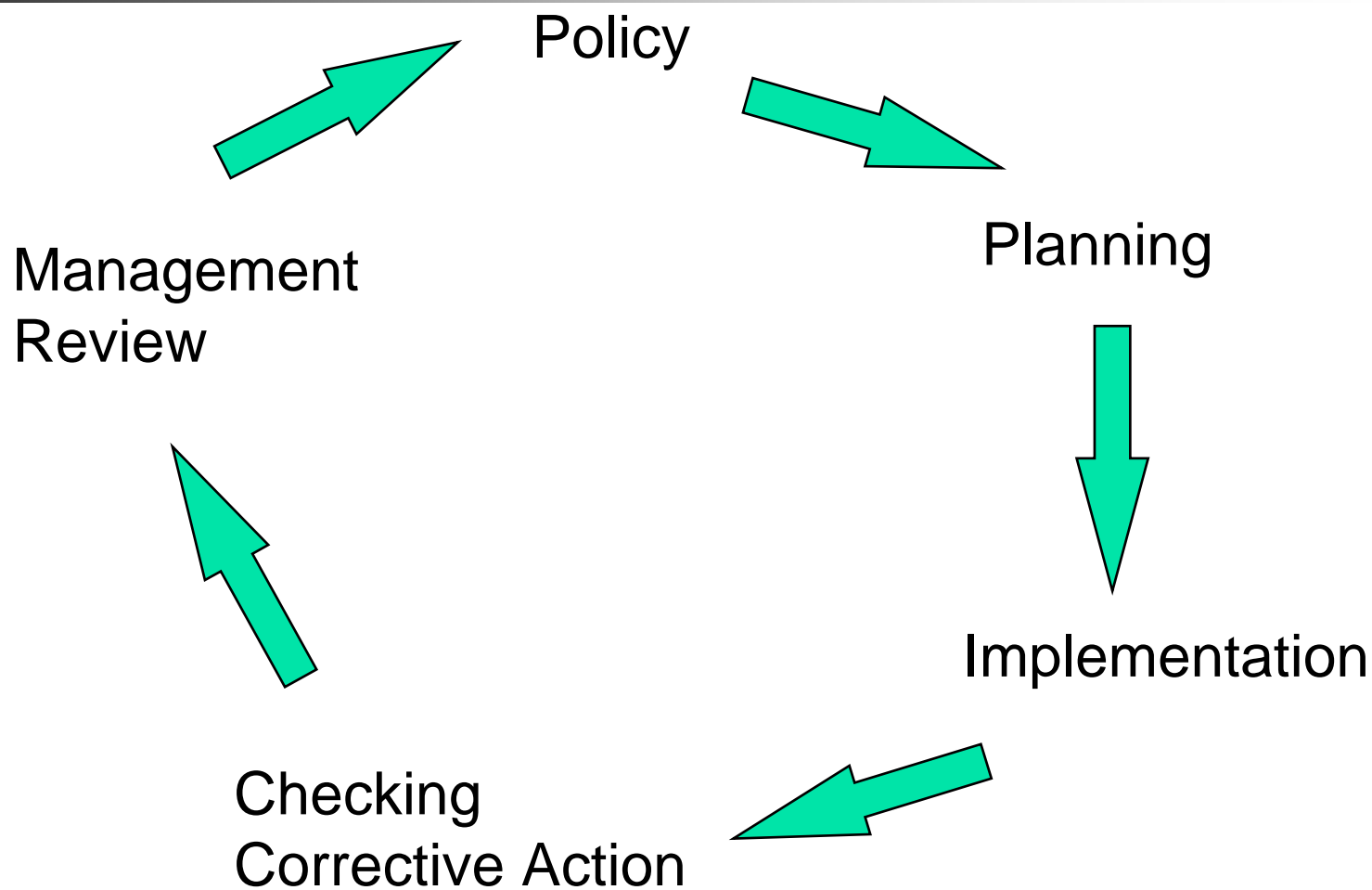
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What is an EMS?

- Systematic way of managing an organization's environmental affairs
- Based on Plan-Do-Check-Act Model (PDCA)
- Focused on **Continual Improvement** of System
- Addresses immediate and long-term impact of an organization's products, services and processes on the environment.
- *A tool to improve environmental performance*

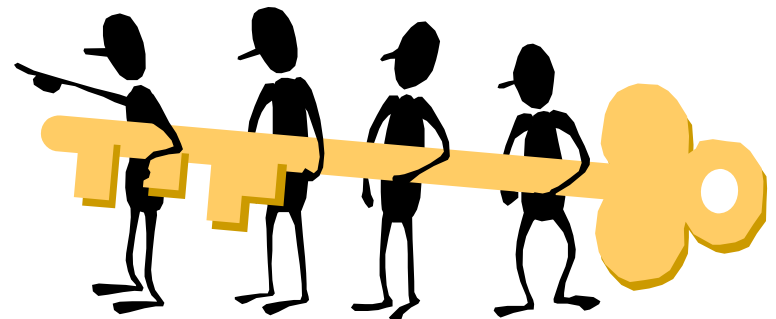
EMS Model





EMS Elements

- Policy Statement/Commitment
- Identification of Significant Environmental Impacts
- Development of Objectives and Targets
- Implementation Plan to Meet Obj. and Targets
- Checking and Follow-up
- Training
- Management Review





EMS

- Focus not only on what but also why
- Top management priority
- Dynamic
- Flexible, simple
- Employee involvement
- Endorses continual improvement

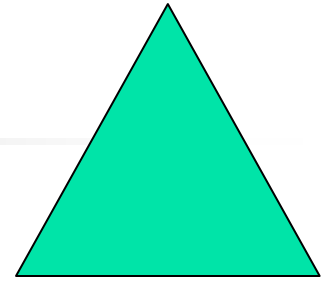


EPA EMS Position/Policy Statements

- In March 1998, the U.S. Environmental Protection Agency (EPA) issued a formal document which communicates EPA's position regarding EMSs, including those based on the ISO 14001 standard.
 - "Implementation of an EMS has the potential to improve an organization's environmental performance and compliance with regulatory requirements. EPA supports and will help promote the development and use of EMSs, including those based on the ISO 14001 standard..."
- The EPA issued subsequent EMS **Position** and **Policy** Statement in May 2002. The Position Statement was re-issued in December 2005.
 - **Agency EMS Policies:**
<http://www.epa.gov/EMS/position/agency.htm>



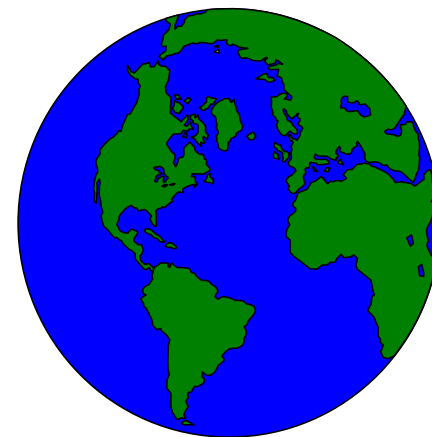
What is ISO?



- International Organization for Standardization - Not an acronym
- "ISO" is a word, derived from the Greek isos, meaning "equal."
- From "equal" to "standard"-- line of thinking that led to the choice of "ISO" as the organization's name.

International Organization for Standardization (ISO)

- Worldwide federation of national standards bodies from over 100 countries, one representative from each country.
- Non-governmental organization (NGO) established in 1947, located in Switzerland.
- American National Standards Institute (ANSI) is US representative to ISO





ISO 14000 Family

- A series of guidance documents and standards to help organizations address environmental issues.
 - 14001: Environmental Management Systems
 - 14004: EMS general guidelines
 - 14010: Guidelines for Environmental Auditing
 - 14011: Guidelines for Auditing of an EMS
 - 14012: Auditing - Qualification criteria
 - 14020: Environmental Labeling
 - 14030: Env. Performance Evaluation (EPE)
 - 14040: Life-Cycle Assessment (LCA)



17 Requirements in ISO 14001

Env. Policy 4.2	Document control 4.4.5
Env. Aspects 4.3.1	Operational control 4.4.6
Legal and other req. 4.3.2	Emergency preparedness and response 4.4.7
Obj. and targets 4.3.3	Monitoring and measurement 4.5.1
Env. Mgmt. Program 4.3.4	Corrective/preventive action 4.5.2
Structure and Responsibility 4.4.1	Records 4.5.3
Training, awareness, and competence 4.4.2	EMS audit 4.5.4
Communication 4.4.3	Management Review 4.6
EMS documentation 4.4.4	

EMS Significant Aspects ISO14001:1996

4.2 Policy

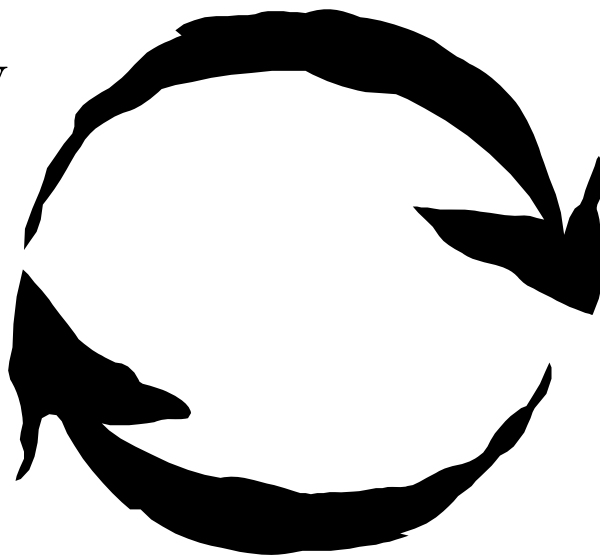
4.6 Management Review

4.3 Planning

4.3.1
Environmental
Aspects

4.5 Checking and
Corrective Actions

4.4 Implementation and
Operation





To Whom Do the Standards Apply?

- Standard is Voluntary
- Large and Small Businesses & Industry
- Service Sectors (hospitals, hotels, etc.)
- City and County Government
- Applicable to all types of organizations, of all sizes anywhere in the world



Suggestions for Starting an EMS

- Start with one issue and build on later
 - Lets you work out the bugs
 - Choose a critical issue that will most easily get buy-in from other departments
 - Can be used as example during development of other programs

- Example: Waste



Example - Waste

- Identify what waste is generated & where it is disposed
- Identify requirements
- Identify who generates the waste
- Identify who manages the waste
- Understand how the waste and personnel change over time



Example - Waste

- Develop system
 - Define responsibilities
 - Develop procedures
 - Integrate into existing systems
 - Ensure change management is addressed
 - Identify action items
 - Develop pollution prevention (P2) goals
 - Present to management



Example - Waste

- Implement System
 - Effective Communications: trainings, signage, forms, web-site, etc.
- System Maintenance
 - Conduct audits
 - Manage action plan
 - Talk with affected personnel to find ways to improve

In 2006, the EPA Region 3 building used 2.7 M kWh of electricity.

- How many 4 bedrooms house would this amount serve?



=



Answer: 740,
4 Bedroom Houses

EMS References



- **U.S. Environmental Protection Agency (US EPA):**
 - <http://www.epa.gov/ems/>
 - <http://www.epa.gov/compliance/incentives/ems/index.html>
- **Technical Assistance Providers (TAP) Directory:** The National Directory of EMS Technical Assistance Providers ("TAP Directory") allows companies and local governments, wanting to develop or improve their EMSs, to easily locate nonprofit technical assistance providers and EMS state and federal programs.
 - <http://www.peercenter.net/taps/>



EMS References - continued

- **Local Resource Centers (LRCs):** On June 18, 2002, seven Local Resource Centers (LRCs) were selected as part of the National PEER Center effort. In Fall 2004, four more LRCs were added to the PEER Center family. The LRCs, located around the country, promote EMS competence and encourage government-to-government sharing and mentoring between public sector organizations. Each Center supplies communities with technical expertise, field-tested tools, and support for EMS implementation.
 - <http://www.peercenter.net/whocanhelp/lrc.cfm>